

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE  
CONSULTING INVESTING MANAGEMENT, LLC  
ZONING MAP AMENDMENT REPORT (#FZC-16-06)  
JULY 27, 2016**

A report to the Flathead County Planning Board and Board of Commissioners regarding a request by Sands Surveying Inc., on behalf of Consulting Investing Management, LLC for a zoning map amendment in the Southeast Rural Whitefish Zoning District and the Rural Whitefish Zoning District. The proposed amendment would change the zoning of the subject property from '*SAG-10 Suburban Agricultural*' to '*SAG-5 Suburban Agricultural*.'

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on August 10, 2016 in the 2<sup>nd</sup> Floor Conference Room of the Earl Bennett Building located at 1035 1<sup>st</sup> Ave West in Kalispell. A recommendation from the Planning Board will be forwarded to the County Commissioners for their consideration. In accordance with Montana law, the Commissioners will hold a public hearing on the proposed zoning map amendment.

Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the Earl Bennett Building at 1035 First Avenue West, in Kalispell. Prior to the Commissioner's public hearing, documents pertaining to the zoning map amendments will also be available for public inspection in the Flathead County Clerk and Records Office at 800 South Main Street in Kalispell.

**I. APPLICATION REVIEW UPDATES**

**A. Planning Board**

This space will contain an update regarding the August 10, 2016 Flathead County Planning Board review of the proposal.

**B. Commission**

This space will contain an update regarding the Flathead County Commissioners review of the proposal.

**II. GENERAL INFORMATION**

**A. Application Personnel**

**i. Owner/Applicants**

Consulting Investing Management, LLC  
PO Box 5270  
Whitefish, MT 59937

**ii. Technical Assistance**

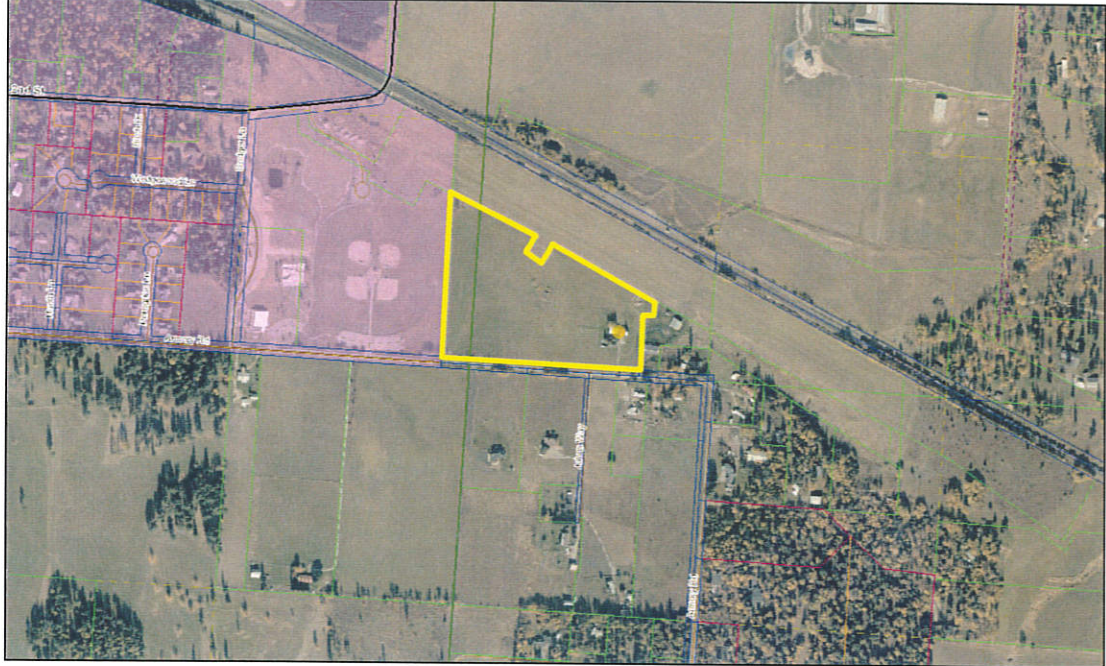
Sands Surveying, Inc.  
2 Village Loop  
Kalispell, MT 59901

**B. Subject Property Location and Legal Description**

The subject property is located at 465 Armory Road just outside Whitefish, MT (see Figure 1 below). The property is approximately 17.428 acres in size and can legally be described as:

A tract of land located in the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section 32 and in the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$ ) of Section 33 of Township 31 North, Range 21 West, P.M.M., Flathead County, Montana, known as: Tract 1 of Certificate of Survey No. 5446

**Figure 1:** Subject property outlined in yellow



### **C. Proposed Zoning Map Amendment**

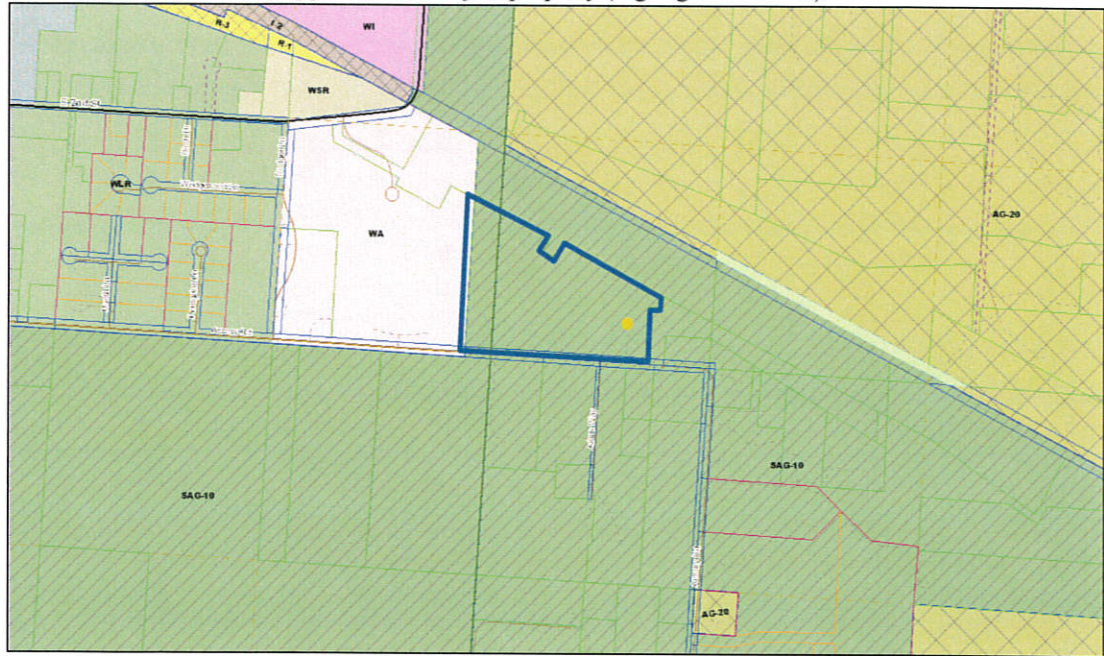
The subject property is currently zoned 'SAG-10 Suburban Agricultural' and located within the Southeast Rural Whitefish Zoning District and the Rural Whitefish Zoning District (see Figure 2 below). As depicted in Figure 3 below, the applicant has requested the zoning map amendment for the property to zone it 'SAG-5 Suburban Agricultural.'

The SAG-10 designation is defined in Section 3.07 of the Flathead County Zoning Regulations (FCZR) as, '*A district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.*'

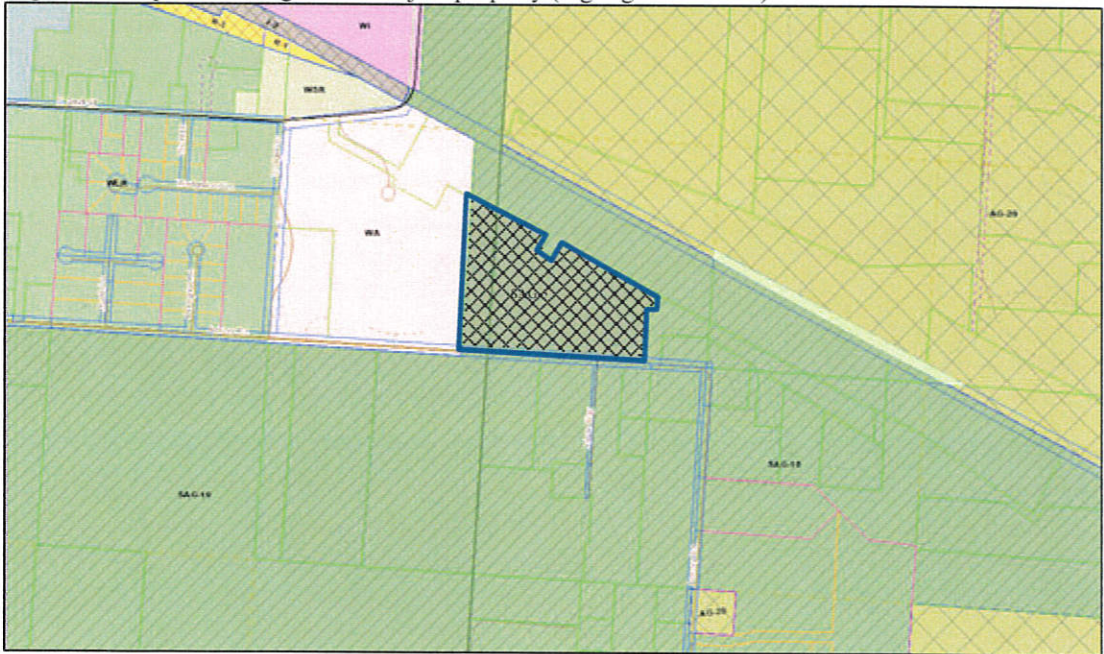
The SAG-5 designation is defined in Section 3.08 FCZR as, '*A district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.*'



**Figure 2:** Current zoning applicable to subject property (highlighted in blue)



**Figure 3:** Proposed zoning on the subject property (highlighted in blue)



#### **D. General Character of and Reason for Amendment**

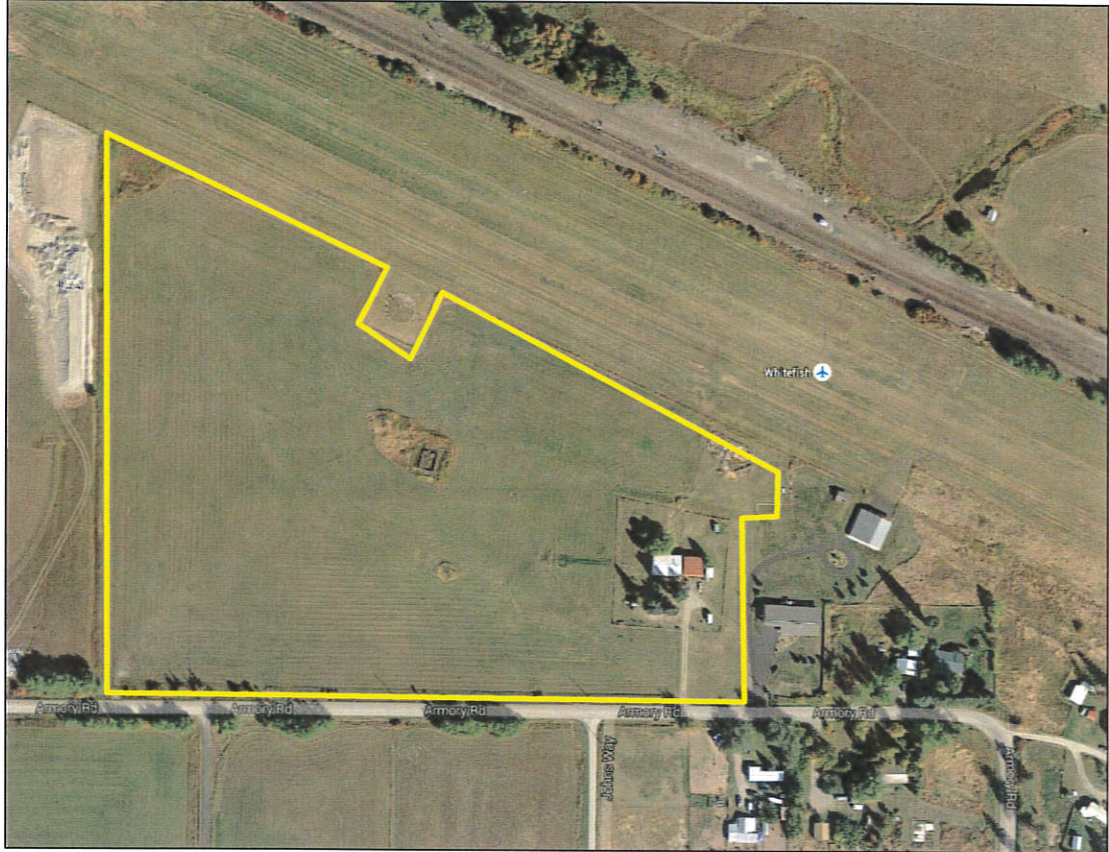
The subject property is a relatively flat field and adjacent to the Whitefish Airport and the BNSF railroad. In the center of the property is an old foundation and on the east side of the property are a house and various accessory buildings. Historically the property appears to have been used for agricultural purposes.

The application states, “The property is located adjacent to the City of Whitefish and the City’s Armory Park. The applicant would like to develop the property in the future to comply with SAG-5 zoning density. The applicant may eventually come



into the City of Whitefish to access sewer and water services but the City of Whitefish does not have SAG-5 zoning classification they only have R-2.5 or WA which is a 15 acre minimum lot size.”

**Figure 4:** Aerial view of subject property (outlined in yellow)



**E. Adjacent Zoning and Character of the Overall Zoning District**

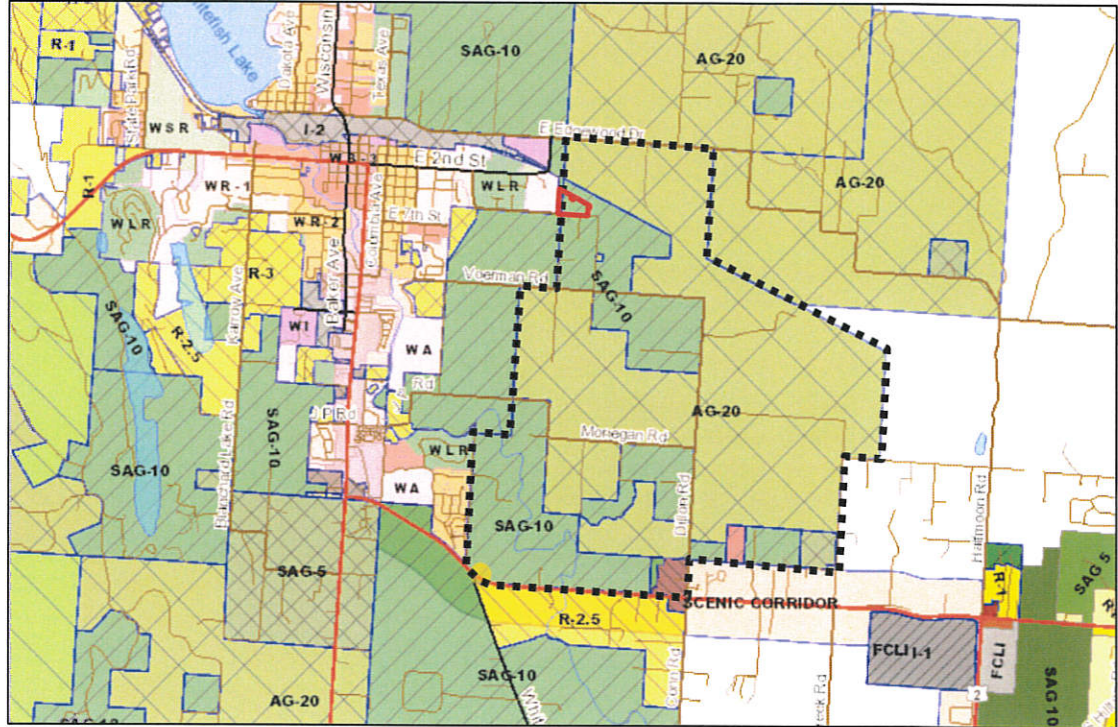
The subject property is located within the Southeast Rural Whitefish Zoning District and Rural Whitefish Zoning District and surrounded by agricultural, suburban agricultural and residential zones (see Figure 5 and Figure 6). The Southeast Rural Whitefish Zoning District consists of AG-20, SAG-10, BSD and BR-2 zones and the Rural Whitefish Zoning District has many different zones but nearest the subject property is SAG-10, I-1 and R-1 zoning. The property is also located adjacent to the City of Whitefish. The nearest Whitefish Zoning consists of ‘WI – Industrial,’ ‘WA – Agricultural,’ ‘WLR – One-family limited residential,’ and ‘WSR – Suburban Residential.’

The subject property is bordered on the north, south and east by SAG-10 and to the west by the City of Whitefish. The zoning to the west within the City of Whitefish is WA. The WA zoning has a minimum lot size of 15 acres, whereas the County SAG-10 has a 10 acres minimum lot size. The property located within the City is currently a park with baseball fields. The lots within the City average less than one acre in size. Directly north of the property is the Whitefish Airport. And to the south and east are large lot residential and agricultural uses with an average lot size of 9.34 acres. The properties to the northeast average 19.479 acres per lot and the lots to the



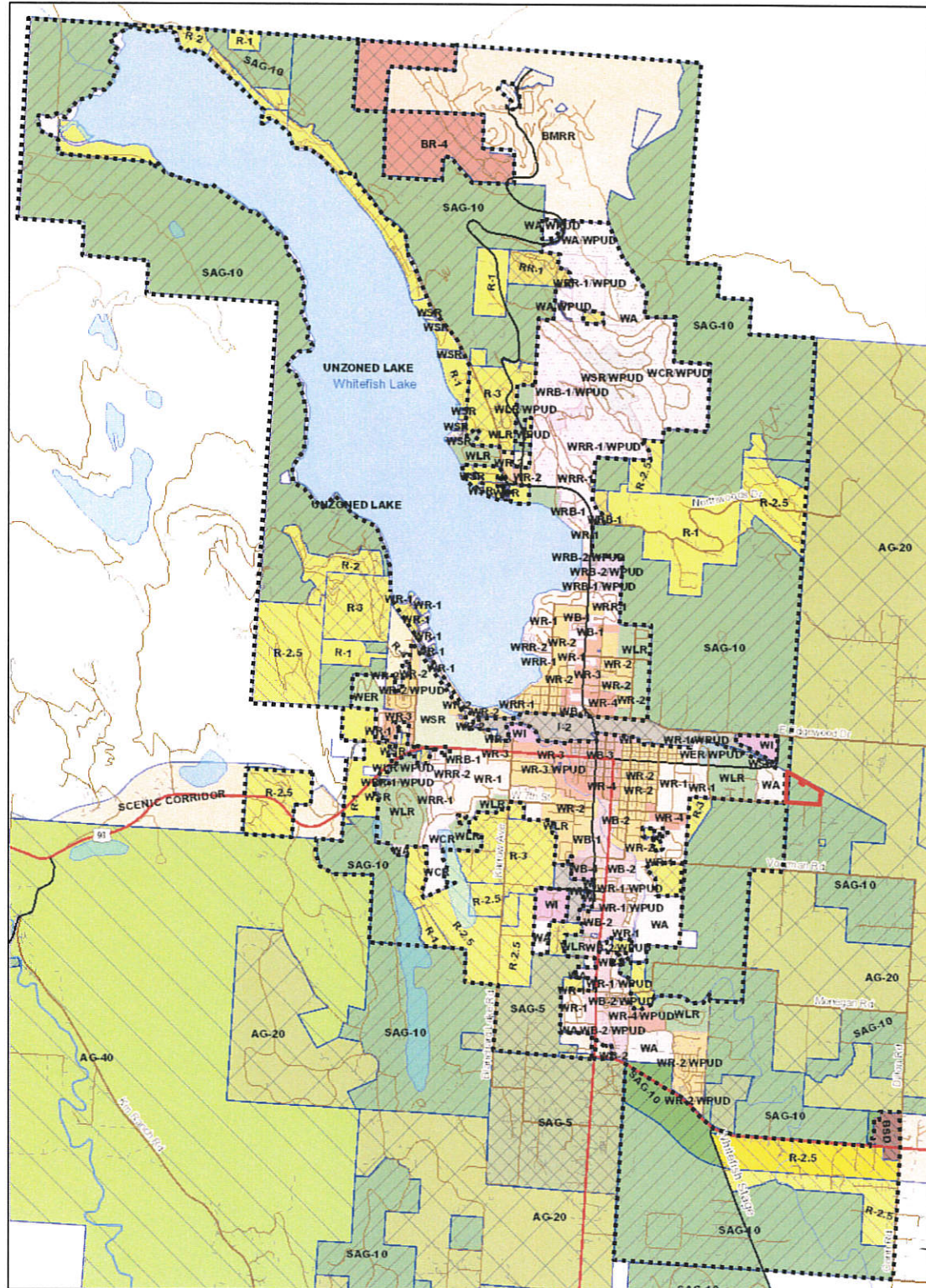
north and northwest average 32.48 acres. To the southwest the average lots size is 10.88 acres.

**Figure 5:** Southeast Rural Whitefish Zoning District (outlined with dashed black line & subject property outlined in red)





**Figure 6:** Rural Whitefish Zoning District (outlined with dashed black line & subject property outlined in red)



#### **F. Public Services and Facilities**

Sewer: Whitefish County Water and Sewer  
 Water: Whitefish County Water and Sewer



Electricity:	Flathead Electric Cooperative
Natural Gas:	Northwestern Energy
Telephone:	CenturyTel
Schools:	Whitefish School District Whitefish High School District
Fire:	Whitefish Rural Fire District
Police:	Flathead County Sheriff's Office

#### **G. Criteria Used for Evaluation of Proposed Amendment**

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

#### **H. Compliance With Public Notice Requirements**

Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject property on July 21, 2016. Legal notice of the Planning Board public hearing on this application was published in the July 24, 2016 edition of the Daily Interlake.

Public notice of the Board of County Commissioners public hearing regarding the zoning map amendment will be physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205 [M.C.A.]. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the general character of the proposed change, the date, time and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

#### **I. Agency Referrals**

Referrals were sent to the following agencies on June 13, 2016:

- Bonneville Power Administration
- City of Whitefish Planning Department
- Flathead City-County Health Department; Environmental Health Services
- Flathead County Public Works/Flathead County Road Department
- Flathead County Sheriff
- Flathead County Solid Waste
- Flathead County Weeds and Parks Department
- Whitefish County Water and Sewer
- Whitefish High School District
- Whitefish School District
- Whitefish Rural Fire District

### **III. COMMENTS RECEIVED**

#### **A. Public Comments**

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning map amendment. It is anticipated any member of the public wishing to provide comment on the proposed zoning map amendment may do so at the Planning Board public hearing scheduled for August 10,

2016 and/or the Commissioner's Public Hearing. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

## **B. Agency Comments**

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Bonneville Power Administration
  - Comment: "BPA does not have any objections to the approval of this request at this time." Email dated June 16, 2016.
- Flathead City-County Health Department
  - Comment: "Reviewed the zone change request. Pretty vague on the matter of water and sewer to serve two additional residences. States they may go to the City of Whitefish for services. The Sanitation on Subdivision process will work this out but I would strongly recommend servicing by Whitefish." Email dated June 21, 2016.
- Flathead County Road & Bridge Department
  - Comment: "At this point the County Road Department does not have comments on this request." Letter dated June 16, 2016.
- Flathead County Environmental Health
  - Comment: "Further division of this property requires review under the Sanitation in Subdivisions Act (Title 76-4-1). This review addresses potable water, wastewater treatment and disposal, storm water drainage, and solid waste disposal. This property is within 500 feet of municipal sewage collection and treatment system (City of Whitefish). Review under the Sanitation in Subdivisions Act (ARM 17.36.328) requires connection the municipal water and sewer services unless it can be demonstrated that connection is physically or economically impractical, or easements cannot be obtained. This property is within 200 feet of the City of Whitefish municipal services. If further development was not proposed, replacement of the existing septic system must be in accordance with Flathead County Regulations for Onsite Sewage Treatment Systems, Section 6.6, "when replacement of the existing septic system is needed, connection to the City services is required unless connection is considered not readily available due to physical or economical impracticality, easement cannot be obtained, or the municipality agrees with the decision to allow septic system installation." The City of Whitefish maintains an existing forcemain which runs south on Johns Way. This is immediately south of the property. Therefore, connection to Whitefish City sewer service is readily available." Letter dated June 30, 2016.

## **IV. EVALUATION OF PROPOSED AMENDMENT**

### **A. Build Out Analysis**

Once a specific zoning designation is applied in a certain area there are certain land uses that are permitted or conditionally permitted. A build-out analysis is performed



to examine the maximum potential impacts of full build-out of those uses. The build-out analysis is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not best or worst case scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zoning map amendment to the future of the community to allow for the best possible review.

**i. Current Zoning**

The property is currently zoned 'SAG-10 Suburban Agricultural.' SAG-10 is defined in Section 3.07 FCZR as, *'A district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.'* The following is a list of permitted uses in an SAG-10 zone (Section 3.07.020 FCZR):

1. *Agricultural/horticultural/silvicultural use.*
2. *Cellular tower.*
3. *Class A and Class B manufactured home.*
4. *Cluster housing.*
5. *Dairy products processing, bottling, and distribution.*
6. *Day care home.*
7. *Dwelling, single-family.*
8. *Dwelling unit, accessory (ADU).*
9. *Guest house.*
10. *Home occupation.*
11. *Homeowners park and beaches.*
12. *Livestock*
13. *Nursery, landscaping materials.*
14. *Park and publicly owned recreational facility.*
15. *Produce stand.*
16. *Public transportation shelter station.*
17. *Public utility service installation.*
18. *Ranch employee housing.*
19. *Riding academy, rodeo arena.*
20. *Stable, public and private.*

The following uses are listed as conditional uses in an 'SAG-10' zone (Section 3.07.030 FCZR). An asterisk designates conditional uses that may be reviewed administratively and two asterisks designate conditional uses that may be reviewed administratively for eight or fewer units:

1. *Airfield.*
2. *Aircraft hangars when in association with properties within or adjoining an airport/landing field.\**
3. *Animal hospital, veterinary clinic.*
4. *Bed and breakfast establishment.*
5. *Camp and retreat center.*

6. *Caretaker's facility.\**
7. *Cemetery, mausoleum, columbarium, crematorium.*
8. *Church and other place of worship.*
9. *Community center building operated by a non-profit agency.*
10. *Community residential facility.\*\**
11. *Contractor's storage yard.\**
12. *Dwelling, family hardship.\**
13. *Electrical distribution station.*
14. *Extractive industry.*
15. *Golf course.*
16. *Golf driving range.*
17. *Kenel, commercial.\**
18. *Manufactured home park.*
19. *Recreational facility, low-impact.*
20. *School, primary and secondary.*
21. *Temporary building or structure.\**
22. *Water and sewage treatment plant.*
23. *Water storage facility.*

The bulk and dimensional standards for SAG-10 zoning requires a setback for principal structures of 20 feet from all boundary lines or right-of-ways. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner and 5 feet for the rear and side. There are also provisions for reduced setbacks for non-conforming lots when the width of the lot is less than 200 feet, 150 feet or 50 feet. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials.

The proposed SAG-10 zoning requires a minimum lot area of 10 acres. The subject property totals 17.428 acres and under the current SAG-10 zoning zero additional lots could be created.

## **ii. Proposed Zoning**

As previously stated, the applicant is proposing 'SAG-5 Suburban Agricultural' zoning. SAG-5 is defined in Section 3.08.010 FCZR as, "*A district to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.*" The following is a list of permitted uses in an SAG-5 zone (Section 3.08.020 FCZR):

1. *Agricultural/horticultural/silvicultural use.*
2. *Class A and Class B manufactured home (See Chapter VII – Definitions).*
3. *Cluster housing (See Chapter V – Performance Standards).*
4. *Day care home.*
5. *Dwelling, single-family.*
6. *Dwelling unit, accessory (ADU).*
7. *Guest house.*



8. *Home occupation.*
9. *Homeowners park and beaches.*
10. *Livestock*
11. *Nursery, landscaping materials.*
12. *Park and publicly owned recreational facility.*
13. *Produce stand.*
14. *Public transportation shelter station.*
15. *Public utility service installation.*
16. *Stable, private.*

The following uses are listed as conditional uses in an 'SAG-5' zone (Section 3.08.030 FCZR). An asterisk designates conditional uses that may be reviewed administratively and two asterisks designate conditional uses that may be reviewed administratively for eight or fewer units:

1. *Airfield.*
2. *Aircraft hangars when in association with properties within or adjoining an airport/landing field.\**
3. *Animal hospital, veterinary clinic.*
4. *Bed and breakfast establishment.*
5. *Camp and retreat center.*
6. *Caretaker's facility.\**
7. *Cellular tower.\**
8. *Cemetery, mausoleum, columbarium, crematorium.*
9. *Church and other place of worship.*
10. *Community center building operated by a non-profit agency.*
11. *Community residential facility.\*\**
12. *Contractor's storage yard (See Chapter IV – Conditional Use Standards).\**
13. *Dwelling, family hardship.\**
14. *Electrical distribution station.*
15. *Extractive industry.*
16. *Golf course.*
17. *Golf driving range.*
18. *Kennel, commercial.*
19. *Manufactured home park.*
20. *Recreational facility, high-impact.*
21. *Recreational facility, low-impact.*
22. *Recreational vehicle park.*
23. *Riding academy and rodeo arena.*
24. *School, primary and secondary.*
25. *Stable, public.*
26. *Temporary building or structure.\**
27. *Water and sewage treatment plant.*
28. *Water storage facility.*

The bulk and dimensional standards under SAG-5 zoning a setback for principal structures of 20 feet from the all boundary lines or right-of-ways. The minimum setback requirement for accessory structures is 20 feet for the front and side-

corner and 5 feet for the rear and side. There are also provisions for reduced setbacks for non-conforming lots when the width of the lot is less than 200 feet, 150 feet or 50 feet. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials.

The proposed SAG-5 zoning requires a minimum lot area of 5 acres. The subject property totals 17.428 acres and under the proposed SAG-5 zoning two additional lots could be created.

In summary, the bulk and dimensional requirements are the same in the SAG-10 and the SAG-5, the zoning map amendment would allow uses that are typical of suburban agricultural zoning districts and similar to uses that are allowed under the existing SAG-10 zoning and two additional lots could be created under the proposed SAG-5 zone.

- B. The proposed zoning map amendment falls within the jurisdiction of the Flathead County Growth **Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)****
- i. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.**

The proposed zoning map amendment falls within the jurisdiction of the Flathead County Growth Policy, adopted on March 19, 2007 (Resolution #2015 A) and updated October 12, 2012 (Resolution #2015 R).

The Flathead County Growth Policy Designated Land Uses Map identifies the subject property as 'Suburban Agricultural.' The proposed Suburban Agricultural zoning classification would appear to comply with the current Suburban Agricultural designation. Chapter 10 Part 3: Land Uses Maps of the Growth Policy under the heading Designated Land Use Maps specifically states, "This map depicts areas of Flathead County that are legally designated for particular use. This is a map which depicts existing conditions. The areas include zoning districts which are lumped together by general use rather than each specific zone and neighborhood plan. Further information on particular land uses in these areas can be obtained by consulting the appropriate zoning regulations or neighborhood plan document. The uses depicted are consistent with the existing regulations and individual plan documents. This map may be changed from time to time to reflect additional zoning districts, changes in zoning districts, map changes and neighborhood plans as they are adopted. Since this map is for informational purposes, the Planning Staff may update the same to conform to changes without the necessity of a separate resolution changing this map." Staff interprets this to mean the Designated Land Use Map is not a future land use map that implements policies, but rather a reflection of historic land use categories. If the zoning map amendment is approved the Designated Land Use Map can be updated by staff to reflect changes made by the County Commissioners based on policies, rather than maps in the document.



Following is a consideration of goals and policies which appear to be applicable to the proposed zone change, to determine if the proposal complies with the Growth Policy:

- ❖ **G.2** – *Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.*
- ❖ **G.4** – *Preserve and protect the right to farm and harvest as well as the custom, culture, environmental benefits and character of agriculture and forestry in Flathead County while allowing existing landowners flexibility of land uses.*
  - **P.4.2** – *Identify lands most suited to agriculture (appropriate soils, access to water, shape and size of parcel, etc.).*
  - **P.4.3** – *Identify a desirable gross density for rural residential development that retains land value, preserves the agricultural character of the community and allows for efficient provision of government services (law enforcement, fire protection, transportation, etc).*
    - The zoning map amendment allows greater flexibility to the land owner while still allowing agriculture and forestry uses. The property is currently used for agriculture and could continue to be used for agriculture in the proposed SAG-5 zone.
- ❖ **G.8** – *Safe, healthy residential land use densities that preserve the character of Flathead County, protect the rights of landowners to develop land, protect the health, safety, and welfare of neighbors and efficiently provide local services.*
  - The SAG-5 designation would allow for development at densities of 1 dwelling unit per 5 acres and would likely not require public services.
- ❖ **G.23** – *Maintain safe and efficient traffic flow and mobility on county roadways.*
  - **P.23.2** – *Limit private driveways from directly accessing arterials and collector roads to safe separation distances.*
  - **P.23.4** – *Recognize areas in proximity to employment and retail centers as more suitable for higher residential densities and mixed use development.*
    - This report contains discussion on the proposals potential burden on transportation below.
- ❖ **G.31** – *Growth that does not place unreasonable burden on the school district to provide quality education.*
  - Further discussion is contained below in this report on the adequate provision of schools below.
- ❖ **G.32** – *Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.*
- ❖ **G.33** – *Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.*

- This report contains discussion on the adequacy of emergency service below.

**Finding #1:** The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request and the Suburban Agriculture land use designation identified by the Designated Land Use Map portrays only zoning which was established at the time the map was created and is not a future land use map.

**ii. Whether the proposed map amendment is designed to:**

**1. Secure safety from fire and other dangers;**

The subject property is located within the Whitefish Rural Fire District and the Whitefish Rural Fire Department would respond in the event of a fire or medical emergency. The nearest rural fire station is located approximately 6.5 miles south of the property at the corner of Whitefish Stage and Hodgson Road and the nearest fire station is within the City of Whitefish and located 2.62 miles to the southwest.

The subject property is located within the Wildland Urban Interface (WUI). Additionally the property is located in the County Wide Priority Area and designated as medium high. The majority of the subject property is an open field, with some trees located near the existing buildings. Many of the surrounding properties are also open fields.

The subject property is located on Armory Road which has the potential to be used as emergency access. Armory Road is a paved two lane local road within a 60 foot easement.

FEMA FIRM Panel 30029C1095J designates the property as unshaded Zone X. Zone X is an area determined to be outside the 0.2% annual chance floodplain.

**Finding #2:** The proposed map amendment will likely not impact safety from fire and other danger because even though the property is located in the WUI and a county wide priority area, the Whitefish Fire Department had no comment, and a majority of the property is open space with only a few trees located on it and the property is located outside the 100-year floodplain.

**2. Promote public health, public safety, and general welfare;**

The subject property is located within the Whitefish Rural Fire District and the Whitefish Rural Fire Department would respond in the event of a fire or medical emergency. The nearest rural fire station is located approximately 6.5 miles south of the property at the corner of Whitefish Stage and Hodgson Road and the nearest fire station, within the City of Whitefish, is located 2.62 miles to the southwest. The property is also served by the Flathead County Sheriff's Office and the Sheriff's office would respond in the event of an emergency. The applicant states, "The proposed SAG-5 zoning classification provides the same setback and height standards as the existing SAG-10 zone and very similar land use restrictions."

The subject property is located on Armory Road which has the potential to be used for emergency access. Armory Road is a paved two lane local road within a 60 foot easement.

The intent of the existing 'SAG-10 Suburban Agricultural' is to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural use. The purpose of the proposed 'SAG-5 Suburban Agricultural' is to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural use. The property is located adjacent to the City of Whitefish. The existing zoning does provide a buffer and the proposed zoning would continue to provide a buffer between urban densities of the city to the west and the agriculture to north, south and east.

**Finding #3:** The proposed amendment does not appear to have a negative impact on public health, public safety and general welfare because the property is served by the Flathead County Sheriff and the Whitefish Rural Fire Department, future development would be similar to uses already permitted and conditionally permitted in the current SAG-10 zoning.

**3. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.**

The subject property is located on Armory Road which has the potential to be used for emergency access. Armory Road is a paved two lane local road within a 60 foot easement. The application states, "The property has access to and fronts on Armory Road which is a paved County maintained road."

Comments from the Flathead County Road and Bridge Department states, "At this point the County Road Department does not have comments on this request."

Traffic counts by the Flathead County Road and Bridge Department, completed 06/06/13 to 06/13/13, indicate an average daily traffic (ADT) count of 578 trips east of the ball field on Armory Road. With the proposed zoning the subject property could be divided into two additional lots. Based on projected land uses arising from the proposed zone change, this proposal could generate an additional 20 ADT. The proposed zone change has the potential to contribute to an increase of 3.5% ADT on Armory Road. The projected traffic counts would likely not impact Armory Roads ability to facilitate adequate transportation.

According to the applicant, "The property currently has one residence which is served by on-site water and sewer facilities. If the property we *[sic]* split, the new parcels would most likely be served by City sewer and water after annexation."

Comments received from the Flathead City-County Health Department state, "Further division of this property requires review under the Sanitation in Subdivisions Act (Title 76-4-1). This review addresses potable water, wastewater treatment and disposal, storm water drainage, and solid waste



disposal. This property is within 500 feet of municipal sewage collection and treatment system (City of Whitefish). Review under the Sanitation in Subdivisions Act (ARM 17.36.328) requires connection the municipal water and sewer services unless it can be demonstrated that connection is physically or economically impractical, or easements cannot be obtained. This property is within 200 feet of the City of Whitefish municipal services. If further development was not proposed, replacement of the existing septic system must be in accordance with Flathead County Regulations for Onsite Sewage Treatment Systems, Section 6.6, "when replacement of the existing septic system is needed, connection to the City services is required unless connection is considered not readily available due to physical or economical impracticality, easement cannot be obtained, or the municipality agrees with the decision to allow septic system installation." The City of Whitefish maintains an existing forcemain which runs south on Johns Way. This is immediately south of the property. Therefore, connection to Whitefish City sewer service is readily available." Because of the properties proximity to existing City of Whitefish's water and sewer lines the applicant will likely be required to connect to the municipal water and sewer services unless they can demonstrate that connection is physically or economically impractical, or easements cannot be obtained.

The subject property is located within the Whitefish Elementary School District and Whitefish High School District. The Whitefish Elementary School District has seen a decline in student enrollment of 6% over the last ten years but an increase of 8% between 2014 and 2015. Whitefish High School District student enrollment has seen a decrease of 31% over the last ten years and a decrease of 2% between 2014 and 2015. Agency referrals were sent to the Whitefish School District and Whitefish High School District but no comments were received regarding the proposal. It is anticipated that the school would have capacity should any growth occur as a result of the proposed zoning map amendment.

The zoning map amendment would change the current minimum lot size from 10 acres to a smaller 5 acres on the subject property. It is anticipated subsequent future subdivision would require review and parkland would not be required at that time because the lots created would be greater than five gross acres in size. The property is adjacent to the City of Whitefish's Armory Park which contains ball fields and a skate park. Additionally the City of Whitefish dog park is nearby along with various parks, natural areas, and recreational opportunities within a short drive of the subject property.

**Finding #4:** The proposed amendment would facilitate the adequate provision of transportation because the property is accessed via Armory Road, the Road and Bridge Department did not have any concerns regarding the proposal, and Armory Lane could manage the increase in traffic as it is a paved two lane local county road.

**Finding #5:** The proposed amendment would facilitate the adequate provision of water, sewerage, schools, parks, and other public requirements because any

new development would require review through the Sanitation in Subdivision Act which may require the use of City water and wastewater services, it is anticipated that the school would have capacity and 5 acre lots would not require parkland during the subdivision review process.

**iii. In evaluating the proposed map amendment, consideration shall be given to:**

**1. The reasonable provision of adequate light and air;**

The application states, "The proposed SAG-5 zoning designation has a minimum lot size of five acres and has identical setbacks to the SAG-10. The neighborhood along Armory Road ranges from Urban densities consisting of third acre lots to Suburban parcels of five to twenty acres in size. The proposed SAG-5 zoning designation does provide adequate light and air."

Any additional lots created or structures constructed would be required to meet the bulk, dimensional, permitted lot coverage and minimum lot area requirements of the SAG-5 zoning classification. The maximum building height within the proposed SAG-5 zone is 35 feet and the maximum building height of the existing SAG-10 zone is 35 feet.

The bulk and dimensional requirements under SAG-5 zoning requires a setback from the boundary line of 20 feet for the front, rear, side and side-corner for the principal structure. The minimum setback requirement for accessory structures is 20 feet for the front and side-corner and 5 feet from the rear and side. There are also provisions for reduced setbacks for non-conforming lots when the width of the lot is less than 200 feet, 150 feet or 50 feet. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials. The setbacks for the proposed zoning classification are identical to those of the current zoning. The bulk and dimensional requirements for the SAG-5 designation have been established to provide for a reasonable provision of light and air.

**Finding #6:** The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional, setbacks and lot coverage requirements within the proposed SAG-5 designation.

**2. The effect on motorized and non-motorized transportation systems;**

The subject property is located on Armory Road which has the potential to be used as emergency access. Armory Road is a paved two lane local road within a 60 foot easement. The application states, "The subject parcel has direct access to Armory Road. Armory Road at this location is a County maintained paved road within a sixty foot right-of-way easement."

Comments from the Flathead County Road and Bridge Department states, "At this point the County Road Department does not have comments on this request."

Traffic counts by the Flathead County Road and Bridge Department, completed 06/06/13 to 06/13/13, indicate an average daily traffic count of 578 trips east of the ball field on Armory Road. With the proposed zoning the subject property could be divided into two additional lots. Based on projected land uses arising from the proposed zone change, this proposal could generate an additional 20 ADT. The proposed zone change has the potential to contribute to an increase of 3.5% ADT on Armory Road. The project traffic counts would likely not negatively impact motorized transportation.

There is no existing bike/pedestrian facilities currently located on Armory Road and the Flathead County Trails Plan does not show Armory Road as a proposed connector or arterial. The City of Whitefish Bike and Pedestrian Master Plan Trail Map shows Armory Road as a proposed Bike and Walkway.

The application states, "Although there are no statistics, Armory Road gets a significant amount of pedestrian activity because of its proximity to the City, however there is little or no shoulder on Armory Road which make for cautious pedestrian travel with no bike or pedestrian paths along this route." The property is also located next to Armory Park which leads to an increase in pedestrian traffic. The proposal has the potential to increase traffic on Armory Road, which may impact non-motorized transportation. However, if the property is annexed in the future to the City and subsequently developed, a Bike and Walkway could be constructed to reduce the impacts on non-motorized transportation.

**Finding #7:** Effects on the motorized transportation system will be minimal because the property is accessed via Armory Road, the Road and Bridge Department did not have any concerns regarding the proposal, and Armory Lane could manage the increase in traffic as it is a paved two lane county road.

**Finding #8:** Effects on the non-motorized transportation system will be minimal because the subject property does not abut existing or proposed bike/pedestrian facilities and but the City of Whitefish Bike and Pedestrian Master Plan Trail Map shows Armory Road as a proposed Bike and Walkway.

**3. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);**

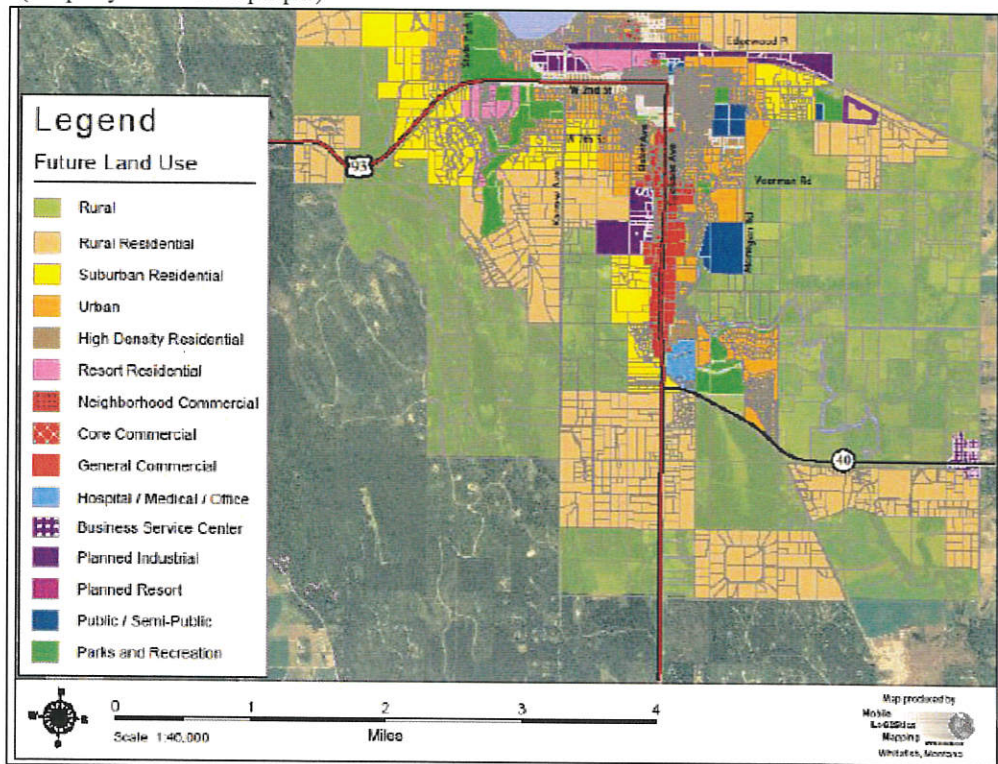
The subject property borders the City of Whitefish. As of the date of the completion of this staff report, no comments have been received from the City of Whitefish about this proposal.

The Whitefish City-County Growth Policy Future Land Use Map includes the subject property. The Whitefish City-County Growth Policy Future Land Use Map designated the property as '*Rural Residential*.' According to the Whitefish City-County Growth Policy, "The rural residential designation is intended primarily for areas that are already divided into lots of 2 ½ to 10 acres in size. Its intent is to preserve rural character while allowing existing large-lot residential areas to continue without becoming non-conforming as to minimum lot size. Applicable zoning districts include WCR and WA-10."



The proposed SAG-5 zoning would be between the 2.5 and 10 acre lots size of the 'Rural Residential' land use.

**Figure 6:** Southern portion of City of Whitefish Growth Policy Future Land Use Map (Property outlined in purple)



**Finding #9:** The proposal appears to be compatible with urban growth in the vicinity of Whitefish because the property is located within the City of Whitefish Growth Policy Future Land Use Map and the proposed SAG-5 zone would allow for a 5 acre minimum lot size and the "Rural Residential" designation calls for 2.5 to 10 acre minimum lots, and the City of Whitefish had no comments regarding this request.

**4. The character of the district(s) and its peculiar suitability for particular uses;**

The character of the district and its peculiar suitability for particular uses can best be addressed using the "three part test" established for spot zoning by legal precedent in the case of *Little v. Board of County Commissioners*. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different from the uses allowed on surrounding properties in the area. Below is a review of the three-part test in relation to this application and the character of the district and its peculiar suitability for particular uses.

**i. *The zoning allows a use that differs significantly from the prevailing use in the area.***

The application states, “The proposed SAG-5 zoning classification provides the same setback and height standards as the existing SAG-10 zone and very similar land use regulations.”

The intent of the existing ‘SAG-10 Suburban Agricultural’ is to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural use. The purpose of the proposed ‘SAG-5 Suburban Agricultural’ is to provide and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural use. The property is located adjacent to the urban densities of the City of Whitefish. The existing SAG-10 does provide a buffer and the proposed SAG-5 zone would continue to provide a buffer between urban densities of the city to the west and the agriculture to north and east. The proposed SAG-5 would allow for similar uses to the existing SAG-10 zoning. The existing SAG-10 zoning allows for two permitted uses that are not allowed within the proposed SAG-5 zoning:

1. *‘Dairy products processing, bottling, and distribution’* and
2. *‘Ranch Employee Housing.’*

There are three permitted uses in the SAG-10 zone that are allowed with a conditional use permit in the SAG-5 zone:

1. *‘Cellular tower,’*
2. *‘Riding academy, rodeo arena,’* and
3. *‘Stable, public.’*

Only two uses are allowed with a conditional use permit in SAG-5 that are not allowed within SAG-10:

1. *‘Recreational facility, high impact,’* and
2. *‘Recreational vehicle park.’*

The proposed zoning would not provide for uses that differ significantly from the prevailing uses in the area.

**ii. *The zoning applies to a small area or benefits a small number of separate landowners.***

The application states, “The proposed zone change encompasses 17 acre in a single ownership. Although this is not a large property it is bigger than many of the adjacent properties. With a single ownership, this most likely meets this test by benefiting a small number of land owners.”

Using standard ArcGIS software staff determined that the subject property is located within a SAG-10 zoning district approximately 4,537.62 acres in size. The subject property is approximately 17.428 acres, roughly 0.004% of the existing SAG-10 district. Also in the vicinity of the property is an AG-20 zoning district that is approximately 6,206.43 acres. The City of Whitefish’s WA, WSR, and WI zones to the west are 37.1, 5.10, and 27.5 acres. The proposed zoning map amendment would be similar in size to

the neighboring City of Whitefish zoning districts but would be much smaller than the AG-20, and SAG-10 county zoning districts.

**iii. *The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and, thus, is in the nature of special legislation.***

The property is owned by one landowner however, the permitted and conditional uses listed within a SAG-5 zone are similar to the permitted and conditional uses in the current SAG-10 zone. The existing SAG-10 zoning allows for two permitted uses that are not allowed within the proposed SAG-5 zoning ('Dairy products processing, bottling, and distribution' and 'Ranch Employee Housing') and three permitted uses in the SAG-10 that are allowed with a conditional use permit in SAG-5 ('Cellular tower,' 'Riding academy, rodeo arena,' and 'Stable, public'). Furthermore, only two uses are allowed with a conditional use permit within the SAG-5 zone that are not allowed within the SAG-10 zone ('Recreational facility, high impact,' and 'Recreational vehicle park'). The zoning map amendment would allow uses that are typical of suburban agricultural zoning districts and similar to uses that exist within the suburban agricultural zoning of the surrounding area.

As previously stated, The Whitefish City-County Growth Policy Future Land Use Map includes the subject property. The Whitefish City-County Growth Policy Future Land Use Map designated the property as '*Rural Residential*.' According to the Whitefish City-County Growth Policy the '*Rural Residential*' land use designation is defined as, "The rural residential designation is intended primarily for areas that are already divided into lots of 2 ½ to 10 acres in size. Its intent is to preserve rural character while allowing existing large-lot residential areas to continue without becoming non-conforming as to minimum lot size. Applicable zoning districts include WCR and WA-10." The proposed SAG-5 zoning would be between the 2.5 and 10 acre lots size of the '*Rural Residential*' land use.

In summary, all three criteria must be met for the application to potentially be considered spot zoning. The proposed zoning map amendment does not appear to be at risk of spot zoning, as it does not appear to meet all three of the criteria.

**Finding #10:** The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zone change would allow for the same uses existing within AG-20, SAG-10 and WA zoning neighboring the property, the size of the SAG-5 zoning district would be comparable to the size to the Whitefish zoning districts and the proposal is compliant with the land use designation of the Whitefish City-County Growth Policy map.

**5. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.**



The subject property is located within the Southeast Rural Whitefish Zoning District and the Rural Whitefish Zoning Districts and surrounded by suburban agricultural, agricultural, industrial and residential zones (see Figure 2). The subject property is bordered on the south and east by SAG-10 and AG-20. The properties to the north are zoned SAG-10. The properties to the west are located within the City of Whitefish and zoned WLR, WI, WSR and WA. The SAG-10 zone has a minimum lot size of 10 acres and the AG-20 zone has a minimum lot size of 20 acres. The WA zone has a minimum lot size of 15 acres, the WI has no minimum lot size, the minimum lot size in WLR is 15,000 square feet and the minimum lot size in WSR is 1 acre. The minimum lot size in the proposed SAG-5 zone is 5 acres. The lot sizes permitted within the SAG-5 zone is in between the lots sizes of the neighboring City and County zones.

According to the applicant, "The permitted and conditionally permitted uses of the proposed Zoning designation of the SAG-5 are almost identical to that of the existing SAG-10 zoning classification. The primary difference between the two zoning designations is the density where the proposed zoning designation has a minimum lot size of 5 acres per lot and the existing zoning designation has a minimum lot size of 10 acres per lot."

The character of the area surrounding the property is rural residential, urban residential and agricultural. The uses allowed within the proposed SAG-5 zone are similar to what is currently allowed within the SAG-10.

**Finding #11:** This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the SAG-5 designation allows for similar uses to the existing SAG-10 and the character of the area surrounding the property is rural residential, suburban agricultural and agricultural which is in line with the proposed SAG-5 zone.

**iv. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.**

The subject property borders the City of Whitefish. The City of Whitefish Planning Department was sent an agency referral but as of the date of the completion of this staff report, did not provide comment on this proposal. The City does not have a zoning use district with a similar minimum lot size to either the current SAG-10 zone or the proposed SAG-5 zone. The closest City of Whitefish zones in proximity to the subject are WI, WSR, WLR, and WA. The WA is directly adjacent to the subject property.

The WA zone which allows for agricultural uses has a minimum lot size of 15 acres. According to Section 11-2A-1 of the Whitefish Zoning Ordinance the WA district is, "*The district is intended for areas for silviculture, agricultural functions, outdoor recreation purposes, open spaces or future development, and for detached single-family homes with customary farm and/or accessory buildings situated in a setting conducive to a rural lifestyle.*" The permitted and conditional

uses within the City's WA zone allows for many of the uses that are permitted and conditionally permitted within the proposed SAG-5 and existing SAG-10. The proposed SAG-5 zone has a minimum lot size requirement less than the minimum lot size of the WA zones.

The application states, "Parks and publicly owned buildings are permitted uses in the WA zoned to the west so this zoning is an anomaly. Most of the city zoning to the west is an urban WLR (Residential) with a 15,000 square foot minimum lot size. The proposed request for SAG-5 with density of 1 dwelling per five acres is much less dense than that of the City."

**Finding #12:** The proposed map amendment appears to be, as nearly as possible, compatible with the zoning ordinance of Whitefish because the proposed SAG-5 zone has a minimum lot size requirement greater than the minimum lot size of the neighboring WLR and WSR zone but less than the minimum of the WA zone and the permitted uses within the SAG-5 zone are similar to the permitted uses within the City's WA zone and the City of Whitefish had no comments regarding this request.

## **V. SUMMARY OF FINDINGS**

- 1) The proposed zoning map amendment generally complies with the Flathead County Growth Policy because applicable goals, policies and text appear to generally support the request and the Suburban Agriculture land use designation identified by the Designated Land Use Map portrays only zoning which was established at the time the map was created and is not a future land use map.
- 2) The proposed map amendment will likely not impact safety from fire and other danger because even though the property is located in the WUI and a county wide priority area, the Whitefish Fire Department had no comment, and a majority of the property is open space with only a few trees located on it and the property is located outside the 100-year floodplain.
- 3) The proposed amendment does not appear to have a negative impact on public health, public safety and general welfare because the property is served by the Flathead County Sheriff and the Whitefish Rural Fire Department, future development would be similar to uses already permitted and conditionally permitted in the current SAG-10 zoning.
- 4) The proposed amendment would facilitate the adequate provision of transportation because the property is accessed via Armory Road, the Road and Bridge Department did not have any concerns regarding the proposal, and Armory Lane could manage the increase in traffic as it is a paved two lane local county road.
- 5) The proposed amendment would facilitate the adequate provision of water, sewerage, schools, parks, and other public requirements because any new development would require review through the Sanitation and Subdivision Act which may the use of City water and wastewater services, it is anticipated that the school would have capacity and 5 acre lots would not require parkland during the subdivision review process.
- 6) The proposed zoning map amendment would provide adequate light and air to the subject property because future development would be required to meet the bulk and

dimensional, setbacks and lot coverage requirements within the proposed SAG-5 designation.

- 7) Effects on the motorized transportation system will be minimal because the property is accessed via Armory Road, the Road and Bridge Department did not have any concerns regarding the proposal, and Armory Lane could manage the increase in traffic as it is a paved two lane county road.
- 8) Effects on the non-motorized transportation system will be minimal because the subject property does not abut existing or proposed bike/pedestrian facilities and but the City of Whitefish Bike and Pedestrian Master Plan Trail Map shows Armory Road as a proposed Bike and Walkway.
- 9) The proposal appears to be compatible with urban growth in the vicinity of Whitefish because the property is located within the City of Whitefish Growth Policy Future Land Use Map and the proposed SAG-5 zone would allow for a 5 acre minimum lot size and the "Rural Residential" designation calls for 2.5 to 10 acre minimum lots, and the City of Whitefish had no comments regarding this request.
- 10) The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because the proposed zone change would allow for the same uses existing within AG-20, SAG-10 and WA zoning neighboring the property, the size of the SAG-5 zoning district would be comparable to the size to the Whitefish zoning districts and the proposal is compliant with the land use designation of the Whitefish City-County Growth Policy map.
- 11) This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this particular location because the SAG-5 designation allows for similar uses to the existing SAG-10 and the character of the area surrounding the property is rural residential, suburban agricultural and agricultural which is in line with the proposed SAG-5 zone.
- 12) The proposed map amendment appears to be, as nearly as possible, compatible with the zoning ordinance of Whitefish because the proposed SAG-5 zone has a minimum lot size requirement greater than the minimum lot size of the neighboring WLR and WSR zone but less than the minimum of the WA zone and the permitted uses within the SAG-5 zone are similar to the permitted uses within the City's WA zone and the City of Whitefish had no comments regarding this request.

## **VI. CONCLUSION**

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal to generally comply with the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.